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Opinion following rehearing

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re NYALA W., et al., Persons Coming Under the Juvenile Court Law.	
MARIN COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. WINNFRED W., et al., Defendants and Appellants.	A101956 (Marin County Super. Ct. Nos. JV 22065 - JV 22076, JV 22200, JV 22251)

In this dependency proceeding involving a communal family with one father and three mothers, the father, Winnfred W., and two mothers, Deirdre W., and Mary C., appeal an order terminating parental rights and placing the children for adoption following a hearing under Welfare and Institutions Code section 366.26.[1] We affirm.

PROCEDURAL AND FACTUAL BACKGROUND[2]

The child abuse leading to this dependency proceeding came to the attention of authorities on November 13, 2001, when four women arrived at the emergency room of

[1] Unless otherwise indicated, all further citations will be to the Welfare and Institutions Code.

[2] We are aware of the California Supreme Court policy requesting nondisclosure of minors' names in appellate court proceedings. However, due to the uncommon first names, the same initials shared by six of the minors, the large number of dependents, and the common initial of "W" for the last name of two appellants, we were unable to write an opinion adhering to this policy and addressing the issues as to each child without making it nearly unreadable. (Cal. Style Manual (4th ed. 2000) § 5.9, pp. 179-180.)

Kaiser Hospital in San Rafael, California, carrying the grossly deformed body of a 19-month-old boy. The physician on duty found that the child was dead. Upon being notified of the incident, several deputy sheriffs interviewed the women and visited their home. The investigation revealed that the women lived with one man, Winnfred W., and 12 surviving children in a household that maintained a communal regimen of life. Carol B. was the mother of the two oldest children, Nyala, age 16, and Rashida, age 15. Deirdre W. was the mother of Jaronimo, age 12, Starchild, age 5, Lemurian, age 3, Sirius, age 2, and Dnagual, age eight months. Mary C. was the mother of Iternity, age 11, Kasha, age 8, Valositti, age 5, Chikung, age 4, and Kaia, age 3.

The following day, the children were detained by Child Protective Services of the Marin County Department of Health and Human Services (hereafter Department) and placed in emergency foster care. On November 16, 2001, the department filed a series of juvenile dependency petitions alleging that the children came within the provisions of section 300, subdivisions (b), (f), and (j). Pending a contested hearing, two more children were born. Deirdre W. gave birth to Rhanthia in April 2002, and Mary C. gave birth to Christopher in March 2002.

At the hearing the court received an autopsy report for the deceased child, a report and testimony of a pediatrician, Robert Pantell, M.D., who conducted a thorough examination of the children, and the testimony of social workers familiar with the case. The evidence revealed that the children were raised under a bizarre regimen involving a diet lacking vitamin D and deficient in other nutrients, harsh discipline inflicted by older siblings on younger siblings, religious practices, and complete isolation from sunlight and social contact with the outside world. The deceased child died of pulmonary complications of rickets; all the younger children suffered from bone demineralization and gross skeletal deformities caused by deprivation of vitamin D. Only the oldest child was free of symptoms of rickets. In the phrase of Dr. Pantell, the children also showed the effects of "psychosocial deprivation," reflecting their isolation from educational experience and contact with society beyond the closed blinds of the communal house.

Following the contested jurisdictional hearing, the court entered on May 20, 2002, an order entitled jurisdictional and dispositional findings and orders, which sustained jurisdictional findings as to each of the children under section 300, subdivisions (b), (f), and (j), terminated reunification services upon a proper set of findings, and set the case for a permanency planning hearing pursuant to section 366.26.

For the purpose of this appeal, we note that the court found that Winnfred W. was the presumed father of the children, but we choose not to review other detailed jurisdictional findings. We quote only a comment in the dispositional section, which serves to summarize the factual basis for the court's order: "All of these parents are intelligent, well-educated adults. They witnessed, first hand, the progressively debilitating consequences (physical, psychological, emotional, and social) of their election to isolate their children from society. They saw the harm developing and progressing, yet undertook no meaningful, remedial measures. They were neither shocked nor even surprised when the children and the effects of their extreme neglect finally were exposed, figuratively and literally, to the light of day. The children's ill health and deformities did not come as a revelation to these parents. Had they cared more about the children's interests than about their concealment, they would have sought medical treatment years ago. But they did virtually nothing until Ndigo died and, even then, did not volunteer that others of their children also were extremely ill. [¶] Though impossible to fathom, the conclusion is irresistible and inescapable that these parents simply considered it more important to hide than to treat their children's devastating illnesses."

Before the section 366.26 hearing was held, one of the three mothers, Carol B., died of leukemia in August of 2002. This appeal thus concerns only the father and two remaining mothers.

At the outset of the section 366.26 hearing, the trial court took judicial notice of all relevant evidence received at the jurisdictional and dispositional hearing. The Department presented evidence of the children's adoptability through the testimony of Chua Chao, a social worker engaged in placing the three oldest children for adoption and

Pia Allabastro, a social worker assigned to the remaining children. Appellants each presented rebuttal witnesses. On December 18, 2002, the court entered the decision terminating parental rights and placing the children for adoption that is the subject of this appeal. The decision was based on a finding, by clear and convincing evidence, that all the children were likely to be adopted and on findings that appellants failed to show the applicability of the exceptions of section 366.26, subdivisions (c)(1)(A) and (c)(1)(E) relating to the benefit of the parental and sibling relationships.

Formal orders terminating parental rights with respect to each of the 14 children were filed on January 10, 2003. Winnfred W. filed timely notices of appeal from each of the orders terminating his parental rights. Deirdre W. filed a timely notice of appeal from the orders terminating her parental rights to Starchild, Lemurian, and Rhanthia. And Mary C. appealed from the order terminating her parental rights to Iternity and Valositti.[3, 4]

DISCUSSION

A. Indian Child Welfare Act

1. Legal Background

The three appellants each argue that a failure by the Department to provide the notice required by the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) requires reversal of the orders on appeal. ICWA was enacted by Congress in 1978 on a finding "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private

[3] We see no merit to Mary C.'s contention that she is entitled to appellate review of the orders from which she has not appealed. She cites no precedent in the field of dependency law in support of this contention and the civil and criminal precedents on which she relies do not present an analogous procedural context. (*Ferroni v. Pacific Finance Corp.* (1943) 21 Cal.2d 773, 780 [appeal from one part of judgment required review of entire judgment to avoid inconsistency]; *People v. Crosslin* (1967) 251 Cal.App.2d 968, 970 and *People v. Jackson* (1961) 198 Cal.App.2d 698, 700 [both cases involved an appeal from a single judgment and order, though initiated by two informations].) Nevertheless, since they present common issues of fact, we have reviewed the evidence relating to all the Mary C. children and find nothing in the record that would support a different outcome in the case of the orders not subject to appeal.

[4] By separate order filed December 3, 2004, we denied the minors' motion to dismiss the appeals as untimely.

agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions." (25 U.S.C. § 1901(4).) For the purpose of promoting the stability of Indian tribes and families (25 U.S.C. § 1902), the statute " 'confers on tribes the right to intervene at any point in state court dependency proceedings.' " (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174.)

Notice to affected tribes of dependency proceedings is "a key component of the congressional goal to protect and preserve Indian tribes and Indian families." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) "[W]here the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right to intervention." (25 U.S.C. § 1912(a).) If the tribe's identity is unknown, the notice must be given to the Bureau of Indian Affairs. (*Ibid.*)

"When proper notice is not given under the ICWA, the court's order [in a dependency proceeding] is voidable." (*In re Karla C., supra,* 113 Cal.App.4th 166, 174; 25 U.S.C. § 1914.) "Notice under the ICWA must, of course, contain enough information to constitute meaningful notice." (*Id.* at p. 175.) "Since the failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, notice requirements are strictly construed." (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.)

The Bureau of Indian Affairs has issued guidelines for the implementation of ICWA that address, among other things, the requirement of meaningful notice. 25 Code of Federal Regulations part 23.11(d) (2004) sets forth an extensive list of information to be provided in the notice, but only subpart (d)(3) is pertinent to this appeal. It provides that the notice include: "All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former

names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information."

Although the federal guidelines are not binding on state courts (*In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1301), California courts have found "the Guidelines notice provisions persuasive." (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 255; see also *In re H. A.* (2002) 103 Cal.App.4th 1206, 1210; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 474.) Applying the guidelines to ICWA practice in California, three recent decisions have held that form SOC 319, which the California Health and Welfare Agency prescribes for ICWA notices by county agencies, is deficient in that it does not provide space for identification of grandparents or other information called for by 25 Code of Federal Regulations part 23.11(d)(3) (2003). (*In re C.D.* (2003) 110 Cal.App.4th 214, 225-226; *In re D. T.* (2003) 113 Cal.App.4th 1449, 1454-1455; *In re Karla C., supra,* 113 Cal.App.4th 166, 176.) However, a form used for closely related purposes, form SOC 318 (Request for Confirmation of Child's Status as Indian), calls for much of the information omitted from form SOC 319. Thus the deficiency in form SOC 319 "may be cured" if the county also sends the tribe both form SOC 319 and form SOC 318. (*In re Karla C., supra,* at p. 176.)

California Rules of Court, rule 1439(d), which implements the ICWA in California courts, provides that "[t]he court, the county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child." "We note that the obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry." (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413.) After making appropriate inquiries, the court and the county discharge their obligations under ICWA by providing notices based on the information received. As stated in *In re Levi U.* (2000) 78 Cal.App.4th 191, 199, "[n]either the Act nor the various rules, regulations, and case law interpreting it require [the county] or the juvenile court to cast about, attempting to learn the names of possible

tribal units to which to send notices, or to make further inquiry with [the Bureau of Indian Affairs]."

2. Factual Background

The record reveals that, shortly after the children were taken into the Department's custody, Winnfred W. informed a social worker that "he believed he had Cherokee Indian heritage." Appellant Mary C. asserted that Winnfred W. was "a quarter Cherokee." The jurisdictional report filed December 5, 2001, states: "On November 29, 2001, Mr. Winnfred [W.] stated that his Mother, Mrs. Eleanore [W.] was Cherokee Indian. He didn't know which tribe or whether or not she was registered. She is from North Carolina, so this Worker requested that he provide all the necessary information as soon as possible so that the Department can properly comply with notifying the Bureau of Indian Affairs and the appropriate Tribal Affiliation(s)." The "delivered service log" documents an interview with Winnfred W. on the same date as follows: "ICWA – His mother is Cherokee – Eleanor [W.] – maiden name 'Robertson' – born in No. Carolina. Kirt will submit paper work to ICWA[.] We requested that Rashin inquire from his mo. if she is registered as Cherokee (back to 1900, as per requirements). Said he would (no response as of 12/5)."

The record discloses further efforts of the Department to secure more information from Winnfred W. on his Indian Heritage. A "delivered service log" dated January 4, 2002, records that the social worker, Kirt De Michiel, asked Winnfred W. "again whether or not he had obtained for [De Michiel] the necessary information regarding his and his Mother's, Mrs. Eleanore [W.]/Robertson's Indian Heritage." Winnfred W. replied that he had not obtained the information. De Michiel "explained to [Winnfred W.] that it was very important that [De Michiel] have that information and that if not [De Michiel] would have to notify the BIA with what [he] had." At that point, Winnfred W. referred De Michiel to appellant Carol B., who was also present at the interview, and Carol B. stated she would give him the information by Monday. De Michiel "stressed" that he needed the information "then."

On Wednesday, January 9, 2002, appellant Deirdre W. rather than Carol B. responded to De Michiel with an e-mail informing him that she was able to determine "through discussion with [Winnfred W.'s] family members" that the "children are some part Cherokee, as is their father through his mother's side of the family who resided in Mecklenberg County, North Carolina. We do not know what percentage this is, and there is no documentation on this. [Winnfred W.'s] mother's name at birth was Ednora Jacueline Robertson. She had two brothers: James and Haywood Robertson. She had a sister who's [*sic*] married name was Willie Wade Faulkner."

De Michiel replied the next day with an e-mail asking for more information: "It would be extremely helpful if I could talk to [Winnfred W.'s] mother to get the info. personally as I could get the info. first hand rather than having to continue going back and forth like this, and as questions come up I could contact her directly. I also would like to know if the Indian hertiage [*sic*] is only from [Winnfred W.'s] mother's side of the family, then I need birthdates of Ednora, James, and Haywood, where they live or lived, and whether or not they were registered or enrolled as members. And if it was before 1906, or are they related to a person listed on the Roll of 1924 in North Carolina. If so[,] who was this person and where and when were they born. If possible a birth certificate would be helpful. Additionally, has his mother or any of her family received services from the Bureau of Indian Affiars [*sic*], gone to Indian schools, gone to an Indain [*sic*] Health Clinic, or lived on a reseravtion [*sic*] or rancheria."

The same day, De Michiel personally questioned Winnfred W. and Deirdre W. The "delivered service log" states: "I asked [Winnfred W.] again whether or not he had obtained any more information for me regarding his and his Mother's, Mrs. Eleanore [W.] Robertson's Indian Heritage. I informed them that I had received the e-mail from Deirdre [W.], but still needed his mother's telephone number, birthdates, where they lived, and whether or not anyone one [*sic*] from their family ever received services. Deirdre told me she would ask, although I explained to them that I had a dead line [*sic*] to meet and was running behind, and would probably have to send in what I already had."

The record next reveals that on January 18, 2002, the County Counsel of Marin County sent a letter, together with the Department's form SOC 319, to the Eastern Band of Cherokee Indians in North Carolina, the Bureau of Indian Affairs, and to two federally recognized tribes of Cherokee Indians in Oklahoma. Form SOC 319 is entitled, "Notice of Involuntary Child Custody Proceeding Involving an Indian Child" and displays the language, "Required Form - No Substitution Permitted." It contains spaces to provide the names, birthplaces and birthdates of the parents and children, but it does not provide a space to identify a grandparent through whom Indian heritage is claimed and the County Counsel did not insert information about grandparents in the form. The record contains copies of "domestic return receipts" disclosing that the letters were sent by certified mail and were received within a week.

In a letter dated January 31, 2002, the Eastern Band of Cherokee Indians responded that, "based on the information received from you," the children were "not registered nor eligible to register as [members] of this tribe." One of the Oklahoma Indian tribes provided a similar letter, which was dated March 13, 2002.

Appellants point out that the Department later engaged in contacts with Winnfred W.'s family. A disposition report reveals that a social worker "spoke with Elinor [W.] on 4/19/02." Three children were placed with a paternal uncle. The children had "supervised visits from their Maternal and Paternal Grandparents." Paternal relatives visited from Sacramento.

The County Counsel did not send out further notices. The decision pursuant to Welfare and Institutions Code section 366.26 did not contain any express findings with respect to compliance with ICWA.

3. Claims of Error

Appellants raise three claims of error: (1) the notices sent to the Indian tribes contained inadequate information, (2) the notices were not served on the proper tribal agents, and (3) the trial court erred in failing to make an explicit determination of ICWA compliance. The claim of inadequate information rests on the omission of any mention of the paternal grandmother in the form sent to the Indian tribes, form SOC 319.

Appellants contend that this single deficiency in the ICWA notice calls for reversal of the order terminating parental rights because it violated the guidelines of 25 Code of Federal Regulations part 23.11(d)(3) (2004) and prevented the tribes from making a meaningful determination of the children's Indian heritage. The contention calls for consideration of the principles of waiver and harmless error.

The issue of waiver requires us to reconcile the statutory requirements of ICWA with a fundamental judicial policy. The adequacy of ICWA notice is not subject to the ordinary rules of issue preservation because the court itself has a sua sponte duty to notify the affected Indian tribes. (*In re H. A., supra,* 103 Cal.App.4th 1206, 1211.) California Rules of Court, rule 1439(d), states that the court has "an affirmative and continuing duty to inquire whether a child for whom a petition under section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child." Rule 1439(e)(3) continues: "if, upon inquiry, or based on other information, the court has reason to know the child may be an Indian child, the court must proceed as if the child were an Indian child . . . ." Nevertheless, where an identified tribe or the Bureau of Indian Affairs determines, after receiving proper notice of the proceeding, that the child is not an Indian child, this determination "is definitive." (Rule 1439(e)(3)(A); see also 25 U.S.C. § 1912.)

Moreover, any parent, whether or not claiming Indian heritage, has a right under ICWA to raise the issue of noncompliance with the statutory notice requirements at any time in the dependency proceedings. As explained in *In re Antoinette S., supra,* 104 Cal.App.4th 1401, 1408, " 'Because the notice requirement is intended, in part, to protect the interests of Indian tribes, it cannot be waived by the parents' failure to raise it.' [Citation.] The right to raise the issue for the first time on appeal is not limited solely to the affected tribes. Instead, 'any parent . . . may petition any court of competent jurisdiction to invalidate' foster care placement or termination of parental rights 'upon a showing that such action violated any provision of [title 25 United States Code] sections 1911, 1912, and 1913.' ([25 U.S.C.] § 1914.) Thus, because it is critical to the tribes in which the dependent child may have existing or future membership, and because tribes depend on parents in the first instance to notify state social workers and courts of known

or potential Indian ancestry, parents who have failed to raise the notice issue below may raise it on appeal." (See also *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 707-708; *In re Samuel P., supra,* 99 Cal.App.4th 1259, 1267; *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.)

Nevertheless, we think that it would be untenable to hold that the principle of waiver never applies, under any circumstances, to the ICWA requirement of notice. Such an extreme position would not only violate the considerations of efficiency, fairness, and certainty served by the principle of waiver in our judicial system but would undermine the goal of the dependency statues "to provide a stable, permanent home for the child in a timely manner." (*In re Santos Y., supra,* 92 Cal.App.4th 1274, 1317.) A categorical rejection of waiver would compromise the " 'interest in permanency and stability' " served by section 366.26 and other dependency statutes by permitting the relitigation of matters that could be resolved in the initial dependency proceeding. (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.)[5]

In our view, the issue is whether the application of the principle of waiver is consistent with the statutory purpose of the ICWA to preserve Indian culture and to promote the stability of Indian tribes and families. (*In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1498; *In re Derek W., supra,* 73 Cal.App.4th 828, 834.) Unlike *In re Jennifer A.*, *In re Samuel P.,* and *In re Marinna J.*, the court and Department here conducted a proper inquiry into the children's alleged Indian heritage and provided the

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[5] In *In re Derek W.* (1999) 73 Cal.App.4th 828, the father sought writ of error *coram vobis* to vacate a judgment terminating parental rights on the ground that his son came within ICWA. Noting that the father did not raise the issue in the trial court, the court observed, "To apply the ICWA at this late date would require the setting aside of all proceedings. After determining David W. and Derek's tribal membership status, the court would have to provide notice to the affected tribe and additional reunification services to David W. (25 U.S.C.A. § 1912(a), (d).) It would then be required to hold additional hearings, with the mandatory participation of 'qualified expert witnesses,' on the question of whether returning Derek to David W.'s custody would cause him serious emotional or physical damage. (25 U.S.C.A. § 1912(f).) Only then could the juvenile court consider whether 'good cause' existed to depart from the ICWA's placement preferences. (25 U.S.C.A. § 1915(a).) [¶] . . . [W]e are unwilling to plunge the parties and the juvenile court into this morass where there is no evidence that doing so would serve the underlying policies of the ICWA by preserving Indian culture and protecting the stability and security of an Indian tribe and family." (*In re Derek W., supra,* at p. 834.)

required notice of the dependency proceedings to the tribes identified in the inquiry. Appellants predicate error on the county's failure to give a more informative notice to the identified tribes. To the extent that appellants' own lack of cooperation with the Department's inquiry prevented the Department from securing the information needed for a more effective notice, we think that they have waived error. It will not compromise the implementation of the ICWA to hold that a parent cannot withhold information from social workers and then claim deficiencies in the notice resulting from the failure of the notice to include the information withheld. (Cf. *In re Pedro N.* (1995) 35 Cal.App.4th 183, 190.)

In the present case, appellants were in a position to provide more information about the paternal grandmother through whom they claim a Cherokee Indian affiliation, but, despite repeated inquiries, they failed to provide the detailed information requested. We hold that they waived a right to assert error based on the failure to include the information in the notice that they themselves failed to provide.

There remains the fact that appellants did give the County the name of the paternal grandmother of alleged Cherokee descent, but the form SOC 319 sent to the Cherokee tribes did not mention her name. We consider, however, that this discrepancy was harmless error. We find several references in the case law to the need for "substantial compliance" with the ICWA notice requirements – a phrase that implicitly recognizes the possibility of harmless error. (E.g., *In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 907; *In re Levi U., supra,* 78 Cal.App.4th 191, 197; *In re Kahlen W., supra,* 233 Cal.App.3d 1414, 1421.) Implicitly finding substantial compliance, the court in *In re Edward H.* (2002) 100 Cal.App.4th 1, 6, found that the county "did not violate the ICWA by giving notice to the Bureau [of Indian Affairs] and two of the three federally recognized Choctaw Tribes."

Other decisions have expressly relied on the principle of harmless error. In *In re Christopher I.* (2003) 106 Cal.App.4th 533, 561, the mother stated that she was "part Indian from the Puma Tribe." When the Bureau of Indian Affairs indicated that such a tribe was unknown, she claimed to belong to the Pima tribe, which subsequently

disclaimed any connection with her. On appeal, the father claimed that the social service agency should have also notified the Pauma tribe, which is identified in the Federal Register. The court declined to "turn the process of ICWA notice into a game, where a party sees how many different but similar-sounding names of Indian tribes he or she can come up with." (*Id.* at p. 566.) It held that "[a]ny error on the part of SSA in this case would be harmless. There is no reason to believe that Christopher is an Indian child, nor is there any reason to believe more notices over more time will result in any more information." (*Id.* at p. 567.)

In re Antoinette S., supra, 104 Cal.App.4th 1401 has some resemblance to the facts of the present case. The father told a social worker he believed "his deceased maternal grandparents had Native American ancestry," (*id*. at p. 1405) but he could not provide birthdates and was not sure of their names. The social services agency ultimately sent an admittedly defective notice to the regional Bureau of Indian Affairs a day before the termination hearing. Finding the error harmless, the court observed, "[N]o tribe could possibly have been identified with the information father provided. . . . SSA satisfied its inquiry obligation in this case. Given this scenario, SSA's failure to provide information the BIA could not utilize is harmless error." (*Id.* at p. 1414, fn. 4.)

The facts of the present case present a closer issue than those of *In re Antoinette S.,* but still call for the same result. In a series of interviews, the three appellants gave the social workers only one item of useful information – the maiden name of the paternal grandmother subject to three variations in spelling of her given name (Ednora, Elinor, or Eleanor Robertson). Despite repeated inquiries, the Department did not obtain any further information that would serve to identify the "Robertson" in question as a person affiliated with the Eastern Band of Cherokee Indians.[6] In particular, the Department did not receive information about her birth date, birthplace (though there was one reference to Mecklenberg County) or tribal enrollment numbers. Moreover, at least one appellant,

[6] Though the County sent notices to Oklahoma tribes of Cherokees, the appellants consistently maintained that the paternal grandmother's Indian heritage was derived from descendants in North Carolina, effectively excluding the possibility of affiliation with the Oklahoma tribes.

Deirdre W., implied that further identifying information was unavailable by informing the social worker that "[w]e do not know what percentage this [Indian descent] is, and there is no documentation on this."

On these facts, we see no reasonable possibility that the inclusion of the paternal grandmother's name in the form SOC 319 or an accompanying form SOC 318 would have led to a determination that the children were members or eligible for membership in the Eastern Band of Cherokee Indians and to the intervention of this Indian tribe in the dependency proceedings. (*People v. Watson* (1956) 46 Cal.2d 818.) The failure to include the grandmother's name in the ICWA notification was therefore harmless error.[7]

Appellants note, however, that the Department was later in a position to obtain more detailed information about the children's Indian forebears since the record reveals a number of contacts beginning in April 2002 between social workers and paternal relatives, including the grandmother. They argue that the Department should have issued a second round of notices to the federally recognized Cherokee tribes after securing additional identifying information. The argument rests, however, on the unfounded assumption that these later contacts with paternal relatives yielded, or might have yielded, information serving to identify the children's Indian heritage. This possibility is, of course, pure conjecture. The paternal relatives may have declined to provide information or rejected the possibility of an Indian affiliation. We consider that the presumption that "official duty has been regularly performed" bars us from indulging in a speculation as to

[7] In the case of Rhanthia, the child born to Deirdre W. in April 2002, the issue of ICWA compliance presents a separate record. At the time of his birth, the County had already received the letter from the Eastern Band of Cherokee Indians stating that it could find no evidence of tribal descent. Later, after the court rendered its intended decision, the County sent a form SOC 319 and form SOC 318 notification to the tribe. The form SOC 318 identified the paternal grandmother as Ednora Jacueline Robertson. The County received a letter dated March 10, 2003, from the tribe stating again that the child was "not registered nor eligible to register as a member of the tribe," a result that corroborates our conclusion that the omission of the paternal grandmother's name on other ICWA notices was harmless error. We consider the delay in sending this notice was also harmless error. Finally, we note that the sufficiency of the ICWA notice for Christopher is not before us. Mary C. did not appeal from the order terminating her parental rights to Christopher, and Winnfred W. has not presented us with citations to the record on which an argument of error could be predicated.

what information the social workers might have obtained in their contacts with paternal relatives. (Evid. Code § 664; *In re L. B.* (2003) 110 Cal.App.4th 1420, 1425.) The record firmly establishes that the social service agency engaged in a proper investigation before issuing the ICWA notices. In the absence of evidence to the contrary, we are obliged to presume that the agency did not thereafter neglect its ICWA obligations.

4. Implicit finding

Appellants next challenge the record of ICWA compliance on the ground that the trial court made no express finding that it had reviewed the submitted ICWA material and found proper ICWA notice. They note that the juvenile court has an obligation "to review the information concerning the notice given, the timing of the notice, and the response of the tribe, so that it may make a determination as to the applicability of the ICWA, and thereafter comply with all of its provisions, if applicable." (*In re Jennifer A., supra,* 103 Cal.App.4th 692, 705.) The trial court is not required, however, to make an express finding that ICWA did not apply. "[I]ts finding may be either express or implied." (*In re Asia L., supra,* 107 Cal.App.4th 498, 506; *In re Levi U., supra,* 78 Cal.App.4th 191, 199.) The record here reveals that the documents pertaining to ICWA compliance were part of the juvenile court file at the time of the jurisdictional/dispositional hearing. The trial court took judicial notice of the record of that hearing. We consider that this is sufficient to establish an implied finding of ICWA compliance.

5. Service on Tribal Agents

Lastly, appellants object that the ICWA notice to the Eastern Band of Cherokee Indians was sent to the wrong address and was not addressed to the designated tribal agent. We find, however, that the notice was received by a proper authority, the Cherokee Center for Family Services, which reviewed the tribal registry. Appellants do not question the authority of this office to act on behalf of the tribe. Any error in addressing the notice was therefore harmless. We do not need to consider the adequacy of the notices sent to the two Oklahoma tribes since appellants never claimed Cherokee descent from these branches of the tribe.

B. Adoptability

The appellants each seek reversal of the orders terminating parental rights on the ground that the evidence of the children's adoptability was insufficient. We turn first to the general principles relating to this issue.

"In selecting a permanent plan under section 366.26, the likelihood of adoption is the pivotal question. [Citations.] This is because adoption, where possible, is the permanent plan preferred by the Legislature. This principle has been well established in many cases." (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 804.) Section 366.26, subdivision (c)(1) provides that, where reunification services have been terminated, the court shall terminate parental rights only if it determines "by a clear and convincing standard that it is likely the child will be adopted . . . ." " 'Clear and convincing' evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

"The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.] [¶] Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

In some cases, however, "a minor who ordinarily might be considered unadoptable due to age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child. Where the social worker opines that the minor is likely to be adopted based solely on the existence of a prospective adoptive parent who is willing to adopt the minor, an inquiry may be made into whether there is any legal

impediment to adoption by that parent . . . ." (*In re Sarah M., supra,* 22 Cal.App.4th 1642, 1650.)

"[T]he social worker's conclusion alone is insufficient to support a finding of adoptability." (*In re Asia L., supra,* 107 Cal.App.4th 498, 512.) Thus, in *In re Asia L., supra,* at page 512, the court reversed an order terminating parental rights where the emotional and psychological development of the children presented a potential obstacle to adoption, and the department failed to provide evidence – other than the social worker's conclusory statement – "of approved families willing to adopt children with the developmental problems faced by [the minors.]"

" 'The mere fact that it is possible the minor might be adopted since prospective adoptive parents are interested does not constitute clear and convincing evidence of the minor's adoptability.' " (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) In *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065, the court observed, "Here, the permanency hearing report indicated a few foster parents were *considering* adoption. This is a far cry, however, from the clear and convincing evidence required to establish the *likelihood* of adoption." Similarly, in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205, the court held that a finding of adoptability was improperly based on the willingness of one person of dubious qualifications to adopt the child.

"We review the juvenile court's order to determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the minors] were likely to be adopted." (*In re Asia L., supra,* 107 Cal.App.4th 498, 509-510; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) "We therefore 'presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' " (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

In the present case, Mary C. argues that the evidence of adoptability was insufficient for three of her children: Iternity, Valositti and Chikung. Deirdre W. maintains the evidence was insufficient with respect to Starchild, Lemurian and Rhanthia.

Winnfred W. challenges the sufficiency of the evidence relating to these six children as well as to his three older children Nyala, Rashida, and Jaronimo.

The record amply supports the finding of adoptability of Winnfred W.'s three oldest children, Nyala, Rashida, and Jaronimo. While Jaronimo displayed mild symptoms of rickets, Nyala and Rashida had no apparent physical abnormalities. The three children appeared "on the surface" to be "average teenagers with the needs and wants of other children their age." A week before the hearing the three children left for Las Vegas, Nevada, to live with paternal relatives, Rory and Karen W., who were pursuing adoption proceedings. Rory, age 31, possessed a doctorate in pharmacy and was employed in his profession. His wife Karen, age 31, was a nurse. The couple was childless and lived in a three-bedroom house with ample room for the three teenage children. The Department social workers found the Rory W.'s were financially responsible and possessed exemplary qualities as adoptive parents. The adoption then required only a homestudy, which the state of Nevada would not conduct until parental rights were terminated.

Turning to the children covered by Mary C.'s assignment of error, we find that the Department planned a joint placement of Iternity and Valositti, but the two children in other respects displayed different characteristics bearing on their adoptability. Iternity, age 11, was a cooperative child with moderately good health despite the effects of rickets. Valositti, age 6, suffered from deformities in his leg bones, respiratory infections, febrile seizures, and a mild heart murmur. He was far below his age group in speech ability and displayed anger and anxiety in his social relations. At the time of the hearing, however, the superceding 366.26 WIC report filed October 25, 2002, reported that the Department was in the final stages of arranging the placement of the two children with the same maternal relatives, John and Anna M., who resided in New Jersey. The M.'s had traveled to California to meet the children and met at length with the Department social workers. They were interested in adopting the children because of the familial relationship – Anna is Mary C.'s eldest sister – and appeared fully capable of caring for their needs. John M., who suffered from a disabling injury, was the primary caregiver. Anna M., who was

employed full time, was able to support the children with the help of the Adoption Assistance Program. The family lived in a two-story house with their sons, age 9 and age 2. To finalize the adoption, the Department needed first to secure the order terminating parental rights since "the policy of the local state ICPC office . . . [required that] the adoptive home study cannot be conducted until adoption is made the permanent plan by the Court and parental rights have been terminated." At the time of the hearing, the Department had received only a positive verbal assurance from New Jersey; written approval could be obtained only after termination of parental rights.

The Department also planned a joint placement of Deirdre W.'s newly born son, Rhanthia, and four-year-old daughter, Lemurian. The record supports the finding that these children were in general attractive candidates for adoption by reason of their physical, mental and emotional qualities. Rhanthia was born in April 2002, and placed with a foster parent. The superceding 366.26 WIC report filed November 20, 2002, reported that he was a healthy child, meeting "age-appropriate milestones." He displayed no impediments to adoption but rather was "a happy, calm infant," "curious about his environment and . . . generally quite relaxed." The report stated that it was "highly likely" that an adoptive home would be found in the near future in view of the child's "remarkable strengths."

At the time of her detention, Lemurian suffered from "generalized demineralization in her skeleton and a history of rickets," but she did not display the obvious skeletal deformation of some of her siblings and soon gained weight while in foster care. During the first months of foster care, she had "frequent nightmares" and bedwetting, but these disorders diminished over time. The superceding 366.26 WIC report filed November 20, 2002, reported that she was then "meeting most of her developmental milestones. Her gross motor skills are age appropriate as is her play. She is toilet trained and has excellent self help skills. For example, she recently learned to tie her shoelaces." Despite some initial difficulties, she had "adjusted well" to preschool and appeared to be "a bright child."

At the time of the hearing, the social worker, Pia Allabastro, reported that she had found a promising potential placement for Rhanthia and Lemurian. She testified, "I've reviewed their home study, and they seem to be quite experienced, [and] resourceful, and are open, according to their home study, in maintaining contact between the siblings and other extended family members."[8]

We recognize that the record presents a close issue with respect to the adoptability of Mary C.'s child, Chikung, and Deirdre W.'s child, Starchild. Both children suffered from gross skeletal deformities in arms and legs, which were likely to require surgery and a lengthy period of recovery, as well as severe dental problems. Chikung was missing several upper and lower teeth and Starchild had lost three front teeth due to decay. It was uncertain whether the children's permanent teeth would properly calcify. Chikung had chronic diarrhea and was prone to respiratory and ear infections. Starchild at first showed similar signs of a weakened immune system, but appeared to be growing stronger. Both children displayed social inhibitions and anxieties as well as sleeping disorders. On the other hand, Starchild appeared to be "bright and inquisitive, often asking questions" above his age. Chikung had age-appropriate ability to understand language but lagged well behind his age group in expressive language skills, perhaps because he lacked front teeth.

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[8] In the statement of decision, the trial court added, "At time of this writing, the court has just learned that an approved adoptive home has been identified for Lemurian and Rhanthia where the children will be placed on December 19, 2002." Citing this statement, Deirdre W. argues that the trial court improperly relied on information outside the section 366.26 hearing. (See § 366.26, subd. (c)(1); Evid. Code, § 140; Cal. Code of Jud. Ethics, canon 3B(7), Advisory Committee Commentary.) As a court of review, we are obliged to indulge in every presumption in favor of the judgment. Since the record at the section 366.26 hearing was sufficient to uphold the court's order, we will not assume that the court improperly relied on evidence outside the hearing. (*Walling v. Kimball* (1941) 17 Cal.2d 364, 373.) Instead, we view the statement as intended to bolster an otherwise proper finding.

Deirdre W. also faults the trial court for expressing its regret that Starchild and Chikung "remain[ed] in *separate* foster placements," but we do not see any connection between this compassionate remark and any of her assignments of error.

Finally, Deirdre W. objects that at the hearing the trial court improperly asked counsel "what the future would hold in store for the children were they not adopted." But we will not presume, on the basis of a single remark at the hearing, that the trial court failed to apply relevant statutory considerations in its order terminating parental rights.

As appellants point out, this evidence indicates that Starchild and Chikung suffered from physical, emotional and social problems that would ordinarily present unusual difficulties in placing them for adoption. Nevertheless, the Department had in fact found an adoptive family for two siblings, Sirius and Dnagual, who suffered from equally severe problems. At the hearing, the adoption social worker, Allabastro, testified that she was then pursuing a promising potential placement for these two children: "Lastly, I've also had conversations with a possible prospective adoptive family for Starchild and Chikung. I've had numerous conversations with this family. They are well aware of both boys' medical needs and the history. [¶] They're also an experienced family. They feel comfortable handling the medical needs. There's a stay-at-home parent who would be able to be available for any surgeries and follow-up."

Mary C. argues that the finding of adoptability is undermined by the fact that the Department could not locate firm placements for all the children "in six months of searching." But we see a reasonable basis for a contrary interpretation. In view of the very complex task for placing the 14 children, it reasonably can be inferred that the Department in fact enjoyed remarkable success during the period of May through November. A certain portion of the delay in identifying placements for all the children reflected the Department's efforts to first explore possibilities of placing the children together with maternal and paternal relatives – a process that in fact succeeded for no less than 10 children. In October, Allabastro first began to select families with whom she was interested in discussing placements with the four remaining children. At the time of the hearing, she was pursuing the final stages of adoption or had identified promising potential placements for all the children.

The Department's success in pursuing adoptive placements for the children by the time of the hearing may have been due not only to the generosity of relatives but also to the capacity for outreach into the community generated by the notoriety of the case. Whatever the cause, the Department's record of success at the time of the hearing tended to support an inference that it could complete the job that it had begun.

Our review ends with the entry of the order terminating parental rights. We conclude that the evidence submitted at the section 366.26 hearing gave the trial court a reasonable basis for finding by clear and convincing evidence that the children were likely to be adopted. Among the children covered by the assignments of error, six possessed physical, emotional and behavioral qualities that were favorable for their adoptive prospects. They included the infant Rhanthia, the three oldest children, and at least two younger children – Lemurian and Iternity – who seem to have possessed the physical and emotional resilience to survive the unhealthy regime in which they were raised. The remaining three children – Valositti, Starchild and Chikung – suffered from physical defects or emotional difficulties that might be expected to impede their adoption, but, at the time of the hearing, the trial court possessed a reasonable basis for finding, by clear and convincing evidence, that the Department was likely to successfully conclude the placements that it was then arranging.

C. Benefit of Parental Relationship

As a further assignment of error, Mary C. and Deirdre W. argue that the trial court erred in failing to apply the exception to termination of parental rights relating to the benefit of a continuing parental relationship. Section 366.26, subdivision (c)(1) provides that, if the juvenile court determines by clear and convincing evidence that it is likely the child will be adopted, it *shall* terminate parental rights and place the child for adoption *unless* "the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (See *In re Marilyn 7H.* (1993) 5 Cal.4th 295, 307-309.)

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child

relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re Jerome D., supra,* 84 Cal.App.4th 1200, 1206; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.)

"The parent has the burden of proving that termination would be detrimental to the child" under the exceptions listed in subdivision (c) of section 366.26. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) On appeal, some courts have adopted the substantial evidence standard in reviewing a finding that the parent failed to meet this burden of proving that termination would be detrimental to the child. (E.g., *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 425; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) But we choose to follow *In re Jasmine D., supra,* 78 Cal.App.4th 1339, in applying the abuse of discretion standard of review, which is ordinarily employed in custody decisions. " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citations.]" (*Id*. at p. 1351.)

In the present case, it is undisputed that Mary C. and Deirdre W. "maintained regular visitation and contact" with their children in closely supervised and monitored visits. After the parents' arrests, the visits occurred weekly in the Marin County Jail and were of brief duration. In addition, the children were allowed to call their parents periodically from foster parents' homes.

Mary C. and Deirdre W. point to positive accounts of the visits and telephone contacts as showing that the children would benefit from continuing the parental relationship. At the outset of the hearing, counsel for the children stipulated that "visits are generally good between the parents and children . . . the children love their parents . . . the parents love their children." In general, the testimony regarding Mary C.'s

contacts fully supports the stipulation. The social workers and sheriff's deputies assigned to the visitations described Mary C.'s warm, attentive and playful manner with the children, and the children's many expressions of love for their mother and desire to be with her more often. In the case of Deirdre W., the record is more mixed. There was evidence that she possessed an affectionate rapport with the children, but she wrote an entirely inappropriate letter to the three oldest children cautioning them not to trust their prospective adoptive parents. The disposition report states in somewhat guarded terms: "The mother [Deirdre W.] was also appropriate overall. She [was] visibly more affectionate and loving toward the children who reciprocate[d] her affection."

In its dispositional order, the court acknowledged the deeply moving "images of these children playing happily with their mothers" and again in the decision on the section 366.26 hearing, it noted that "affectionate relationships unquestionably do exist between all the children and their mothers." But the court observed that the supervised visitations and telephone calls still offered a limited insight into the parent-child dynamics: "The few visits arranged before the parents' arrests were conducted under unnatural, artificial, closely supervised (and scrutinized) conditions. The post-arrest contacts were even more restrictive. Whether those contacts appeared positive or negative offers at best only a slim glimpse into the quality (beneficial, detrimental, or otherwise) of the children's relationships with their parents."

The court decision reasonably insisted, however, that the evidence of beneficial parent-child interaction should be viewed in light of a history of abusive parenting: "Viewed in its totality, the evidence in this case portrays a family environment in which for years the children were deprived of nutritional essentials and medical needs; were subjected to bizarre forms of physical and psychological abuse; and were totally isolated from the world outside the interior walls of their residence where they were required even to cover windows to avoid observation by (and consequently of) the inhabitants of their immediate neighborhood. [¶] . . . The court has been left to speculate based upon limited and ambiguous information of dubious evidentiary weight about positive aspects of the children's lives with their parents and qualities in their relationships that might be

regarded as 'beneficial.' The most that can be said in this connection is that something positive must have transpired in their home because all of the children managed to emerge from the environment displaying conspicuous positive qualities – including remarkable capacities for empathy and affection."

On this evidence, the court concluded that Mary C. and Deirdre W. had not carried the burden of showing that termination of their parent-child relationships "would be so detrimental as to outweigh the benefits of permanence and stability that adoption would provide." We have quoted at length from the decision because it accurately reflects our own reading of the record. We therefore hold that the trial court acted within the scope of its discretion in refusing to apply the exception of section 366.26, subdivision (c)(1).

D. Benefit of Sibling Relationship

Lastly, Winnfred W. and Deirdre W. contend that the trial court erred in declining to apply the statutory exception to termination of parental rights based on the benefit of a sibling relationship. Effective January 1, 2002, section 366.26 was amended by adding subdivision (c)(1)(E), which now authorizes the court to find that termination of parental rights would be detrimental to the child because "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

"This new exception now permits the court to consider the sibling relationship in deciding whether a compelling reason exists to choose something other than adoption." (*In re Celine R.* (2003) 31 Cal.4th 45, 54.) A parent has standing to assert the exception to the termination of parental rights "to the same extent the parent has standing to assert the subdivision (c)(1)(A)-(D) exceptions to termination of parental rights." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402.) "The

parent bears the burden of showing that a sibling relationship exists and that its severance would be detrimental to the child." (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.)

The first decision to construe the sibling relationship exception, *In re L. Y. L., supra,* 101 Cal.App.4th 942, inferred that the Legislature intended the courts "to balance the benefit of the child's relationship with his or her siblings against the benefit to the child of gaining a permanent home by adoption . . . ." (*Id.* at p. 951.) The court is directed first to determine whether terminating parental rights would substantially interfere with the sibling relationship. "To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship. To determine the significance of the sibling relationship, the court considers the factors set forth in section 366.26, subdivision (c)(1)(E)." (*Id.,* at p. 952, fns. omitted.)

"[I]f a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide." (*In re L. Y. L., supra,* 101 Cal.App.4th 942, 952-953.) On the facts of the case, the court in *In re L. Y. L.* found that "[s]ubstantial evidence supports the [trial] court's conclusion that the benefits of adoption outweighed the benefits of continuing [the minor's] relationship with [her sibling], even if it be assumed that termination of parental rights would result in a substantial interference with the sibling relationship." (*Id.* at p. 953; see also *In re Jacob S., supra,* 104 Cal.App.4th 1011, 1016-1019; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251-254.)

The dependency proceedings in the present case resulted in the placement of the children in five different foster homes. The three oldest children – Nyala, Rashida, and Jaronimo – were placed together. Five of the six Mary C. children – Iternity, Kasha, Valositti, Chikung, and Kaia – were placed in the same home, and the newborn,

Christopher, was placed in a separate specialized foster home. Two Deirdre W. children requiring special care – Sirius and Dnagual – were placed in a specialized professional foster home, and the three other Deirdre W. children – Starchild, Lemurian and the infant, Rhanthia – were placed in another home. The Department was able to arrange many opportunities for the separate groups of children to visit each other. There were monthly meetings of all siblings, play times before the weekly meetings with parents, and frequent informal exchanges between foster homes.

The social workers who observed the group visits of the children noted an unusually strong sibling bond, presumably created by their upbringing in a socially isolated communal home. The children were "enthusiastic about visiting with each other and interact[ed] remarkably well together." They talked openly about wanting to spend time with their siblings and appeared "happiest when with each other." There was evidence of a particularly strong bond of affection between the Deirdre W. children, Starchild and Lemurian.

The placement of the three oldest children with their paternal relatives in Nevada minimized the disruption of the sibling relationship since they formed a subgroup in the communal family that bonded most closely with each other. Again, the infant Christopher was placed with maternal relatives a few months after his birth. Initially, the social worker, Allabastro, sought to place the other children in groups of three or four, but when that proved impossible, she arranged to place the children in pairs. Two of these pairs (as well as Christopher) were placed with maternal relatives in the mid-Atlantic states, but the other children were placed with three unrelated families in California.

The Department's social workers assessed prospective adoptive families "for their willingness to maintain contact" among siblings. The reports submitted to the juvenile court repeatedly stated that the selected adoptive parents understood the importance of the sibling relationships and were committed to keeping the children in contact. The adoptive parents were referred to the Consortium for Children to work out agreements for post-adoption contact. In the case of the children placed with maternal relatives, the

prospects of future contact among this group were enhanced by the existing relationship among the adoptive parents, but these five children were separated by geography from their siblings on the West Coast and in Nevada.

The trial court found that "all of these children will experience 'substantial interference with [their] sibling relationship[s]' – sibling relationships that meet *all* the criteria specified in § 366.26(c)(1)(E)." Indeed, the court observed, "[B]y reason of their very unique home environment, they probably are more closely bonded to one another than most siblings in more 'traditional' families. To have to separate any of them is a painful tragedy."

The court found, however, that the "background of practical reality" militated against efforts to preserve the large family unit. In the dependency proceedings, the Department found it necessary to divide the children into four foster homes and, except in the case of the three oldest children, it did not succeed in identifying prospective adoptive parents for groups of more than two. As the court noted, "the circumstances that brought the children to the court's attention in the first place practically guaranteed that their sibling relationships would be substantially disrupted." The only effective means to assure continued sibling interaction was to place all the children in long-term foster care. Balancing the benefits of this alternative against the stability and permanence of adoption, the court found: "Although, arguably, the court might better assure formal sibling interaction by retaining jurisdiction and placing all the children in long-term foster care, the court does not believe that the assurance of judicially enforceable sibling interaction outweighs the benefits of stability and security that adoption will confer upon these children." In reaching this conclusion, the court placed "some faith" in the expressed intention of the adoptive parents to maintain sibling contact.

We find substantial evidence in the record to support the factual assumptions underlying the court's decision; and, like the court, we see no practical solution between the proposed adoptive placements and the alternative of foster homes. The record reveals that the Department exhausted all opportunities to preserve the sibling relationships, but the circumstances of the case dictated placement of the children in five foster homes and

their later placement for adoption in seven separate families. The Department still endeavored to preserve some sibling contact by selecting adoptive families willing to arrange sibling visits and securing their commitments to do so. Though the choice was a difficult one, we think the trial court acted reasonably in deciding that the children would enjoy more nurture and stability in a series of separate adoptions, with certain assurances of sibling contact, than they would enjoy in foster home placements calculated to maximize sibling contact and interaction.

The judgment is affirmed.[9]

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Swager, J.

We concur:

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Marchiano, P. J.

_____
Margulies, J.

[9] We deny Minors' motions filed September 2, 2004, to augment the record on appeal as to submit new evidence pursuant to Code of Civil Procedure section 909, and deny the request for judicial notice filed October 25, 2004.